IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.1252 OF 1999
IN
CHAMBER SUMMONS NO.235 OF 1999
IN
SUIT NO.983 OF 1996

Chandrakala Shriram Surve & Ors. .. Appellants.
Versus
Renown Properties and Holding
Pvt. Ltd. & Ors. .. Respondents.

Mr.M.P.Rege i/b. M.P.Rege & Co. for appellants.
Ms.Seema Gupta i/b.A.M.Sarogi & Co. for respondents.

CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ.

DATE : 16th June, 2007.

P.C.:

1. Heard learned Advocates for the parties.

2. This appeal arises from the order dated 8th September, 1999 passed in Chamber Summons No.235 of 1999 in Suit No.983 of 1996. By the impugned order, the Chamber Summons taken out by the respondent No.5 for joining him as the party defendant to the said suit had been allowed.

3. Undisputedly, the suit has been filed seeking the relief of declaration to the effect that the agreement entered into between the appellant and the respondent No.1 and 2 on 18th July, 1985 has been

terminated w.e.f.1996.

4. Clause 2 of the agreement placed on record read thus : -

> 2. On the execution of this agreement the Vendor has put the Purchaser in vacant possession of the said property as the licensee of the Vendor and has also executed in favour of the Purchaser’s nominee the Power of Attorney to enable the Purchaser to develop the said property. The purchasers are hereby authorised and entitled to develop the said property by constructing the Building thereon as per the plan that may be sanctioned by the Municipal Corporation of Greater Bombay and to sell the tenements therein on ownership basis to the various purchasers thereof as the Purchasers may deem fit PROVIDED HOWEVER that the purchasers shall not be entitled to part with the possession thereof till the Purchasers have paid the sum of Rs.1,50,000/- as provided in clause 1(4) above and further trust in the event of the Vendor becoming entitled to terminate this agreement and termination of the same the licence hereby granted shall stand revoked and

the Vendor shall be entitled to receive back the possession."

5. Plain reading of the above quoted clause in the agreement, prima-facie discloses that the appellants had authorised the respondent Nos.1 and 2 to develop the property and to enter into the agreements with the prospective buyers of tenements therein on ownership basis. It is the case of the respondent No.5 that he is one of such prospective purchaser of the tenements to be constructed by the respondent Nos.1 and 2 in the property of the appellant under the said agreement. The agreement also contains that the possession of the property has been delivered to the respondent Nos.1 and 2 for the development of the said property. In the background of these facts, it is to be held that prima-facie, the respondent No.5 had made out a clear case of interest in the matter pending before the Court in Civil Suit No.983 of 1996 and any order that may be passed in the said suit may materially affect the interest of the said respondent No.5.

6. Once it is not in dispute that there has been an agreement between the respondent Nos.1 and 2 on the one hand and the respondent No.5, who is the prospective purchasers of the tenements in the building to be

constructed in the property of the appellants in terms of the said agreement, obviously the respondent No.5 discloses interest in the subject matter of the suit and it is necessary for the Court to grant hearing to such person before passing any order on the subject matter in dispute. Considering the same, it cannot be disputed that the respondent No.5 is a proper party to the suit and no fault can be found with the impugned order and, therefore, no interference therein is called for. The Appeal stands dismissed. No order as to costs..

7. The necessary amendments in terms of impugned order should be carried out within a period of four weeks from today.

(R.M.S.KHANDEPARKAR, J.)

(D.G.KARNIK, J.)